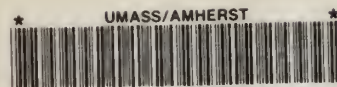


MASS. PS20.2: C49/sec.1

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SECTION ONE

CIVIL LIABILITY

GOVERNMENT DOCUMENTS
COLLECTION

FEB 23 1989

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03/187

PATROL & SELF DEFENSE TACTICS

OFFICER ARTHUR Wm, LAMB

1. AS A LAW ENFORCEMENT OFFICER, UNDER WHAT CONDITIONS MAY AN OFFICER USE HIS/HER SERVICE BATON ?
2. AS A LAW ENFORCEMENT OFFICER, HOW DO YOU DECIDE WHERE THE USE OF THE SERVICE BATON ENDS AND THE USE OF THE SERVICE FIREARM BEGINS ?
3. WHEN AN OFFICER USES FORCE, HEOR SHE IS USUALLY ACCUSED OF OVER-REACTING AND BRUTALITY. IN YOUR OPINION, WHY ARE THESE ALLEGATIONS SO PREVALENT ?
4. WHEN AN OFFICER IS ISSUED, (HANDCUFFS, MACE, BATON, FIREARM), WHAT SEQUENCE, IF ANY, DO YOU BELIVE THE OFFICER SHOULD USE THEM WHEN HE HAS AN ALTERCATION IN MAKING AN ARREST ?
 - 1.
 - 2.
 - 3.
 - 4.

Mass Criminal Justice Training Council

Policies and Procedures

Use of Force

GENERAL CONSIDERATIONS AND GUIDELINES

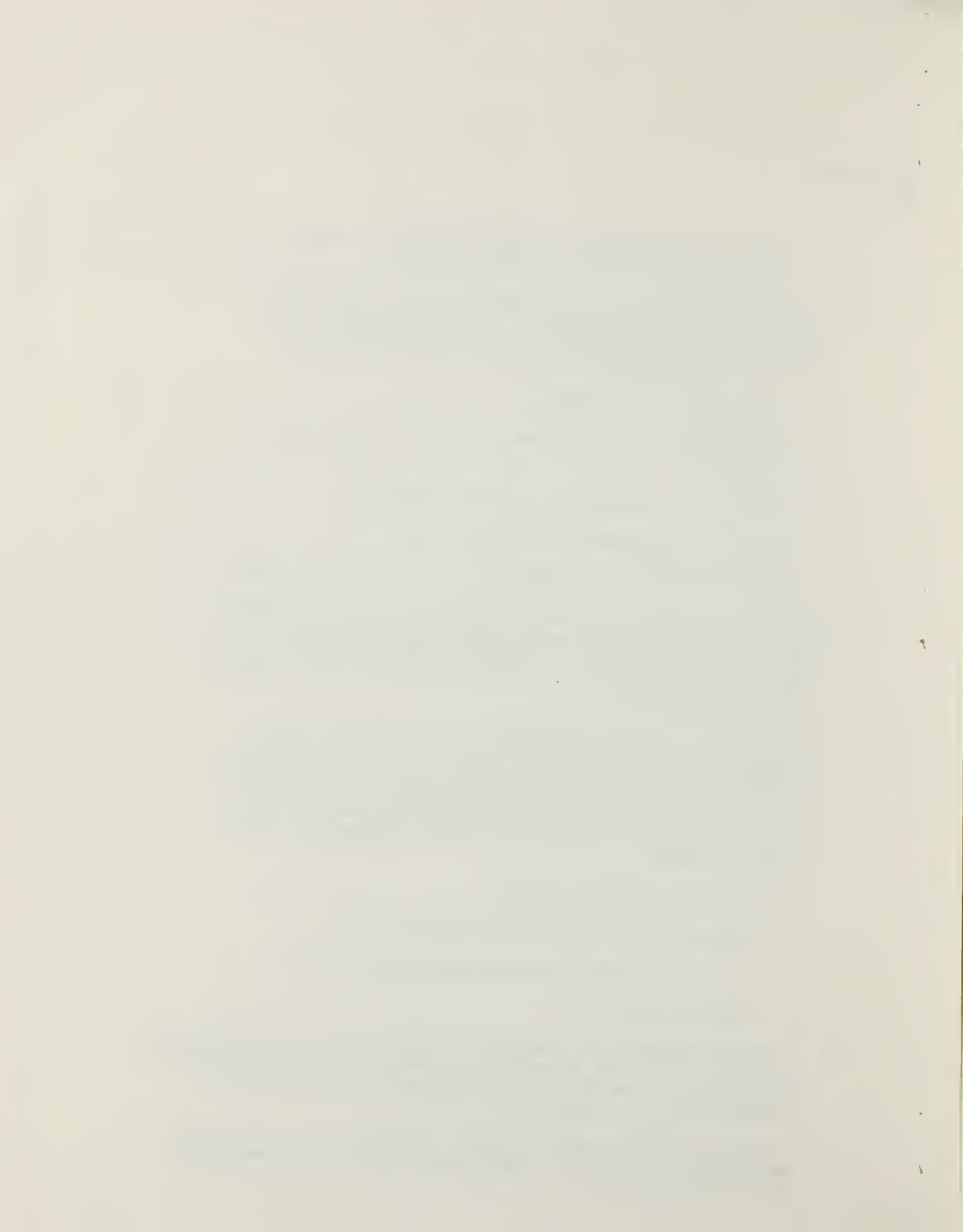
Because of his law enforcement and peacekeeping role, a police officer will be required at times to resort to physical force to enable him to fully carry out his responsibilities. The use of force by police officers is an issue of great concern to society, individual officers and police administrators alike. All too often cries of police brutality are heard throughout the country and it has become more difficult for an officer to effectively do his job without fear of some form of reprisal. This is particularly true where a determination of the propriety of the use of force is often after-the-fact and subjective in nature. Therefore, the lawful use of force must be controlled and confined so that an officer will not subject himself to civil and criminal liability through the unnecessary use of force. The procedures that follow are for the benefit of police officers so that they may have more specific standards to guide them in field situations.

PROCEDURES

1. Use of force as outlined in this policy statement means non-deadly force, such as the use of hands, handcuffs or other restraining devices, chemical substances, agents or similar devices or instruments for the emission of gas, and police or riot batons.
 - a. Non-deadly force shall mean that degree of force which in the circumstances is neither likely nor intended to cause great bodily harm.
 - b. Deadly force is that inflicted by firearms and is treated in a separate policy statement.
2. Non-deadly force may be used by a police officer in the performance of his duty:
 - a. when necessary to preserve the peace, prevent commission of offenses, or prevent suicide or self-inflicted injury; or
 - b. when necessary to overcome resistance to lawful arrests, searches and seizures, and to prevent escapes from custody; or

Use of Force
Two

- c. when in self-defense, or defense of another against unlawful violence to his person or property.
- 3. The force used shall be no greater than is necessary and reasonable in a given situation. The amount and degree of force which may be employed will be determined by the surrounding circumstances including, but not limited to:
 - a. the nature of the offense;
 - b. the behavior of the subject against whom force is to be used;
 - c. actions by third parties who may be present;
 - d. physical odds against the officer; and
 - e. the feasibility or availability of alternative actions.
- 4. An officer acting alone may be required to resort to a much greater degree of force than would be necessary if another officer had been present. Therefore, whenever possible, an officer should call for and await assistance, unless immediate action is required.
- 5. The preferred means of using force are set forth below in ascending order from the least severe to the more drastic measures. An officer should exhaust every reasonable means of employing the minimum amount of force before escalating to a more severe application of force except where it is necessary to protect himself or another from serious bodily injury or death.
 - a. physical strength or skill;
 - b. approved chemical substance or noxious gas;
 - c. iron claw or other approved restraining devices;
 - d. approved baton.
- 6. A weapon should not be displayed or brandished as a threat unless its actual use in the situation would be proper. This does not prohibit an officer from having a weapon readied when it is anticipated that a weapon may be required.
- 7. Officers shall not alter or modify a weapon without the express permission of the Chief. Only weapons authorized by the Chief may be used.



Use of Force
Three

8. Officers shall be properly trained in the use of weapons such as batons and chemical substances before being authorized to carry such.
9. Chemical substances may be used when physical force is necessary:
 - a. to protect an officer from an assault; or
 - b. to subdue a person who resists arrest; or
 - c. to deter persons engaged in riotous conduct.

It is preferred that chemical substances not be used if resistance is minor and not hazardous, or if physical powers would reasonably achieve the same end.

10. Because of the possibility of being overcome himself, an officer should avoid the use of chemical substances when he is in close proximity to the offender in a confined space.
11. An officer who employs chemical substances as a weapon shall provide treatment for the victim as soon as practicable under the circumstances.
12. The baton may be used by an officer:
 - a. in self defense or in the defense of another; or
 - b. when it is necessary to subdue a person violently resisting arrest; or
 - c. to deter persons violently engaged in riotous conduct.

Because of the potential harm, the baton should only be utilized if lesser methods have failed or would be obviously futile.

13. When the use of the baton is necessary, these guidelines shall be followed:
 - a. Blows capable of inflicting possibly fatal or permanent injury must be avoided. For example, blows to the head, temple or throat can result in serious injury or even death; blows to the abdomen, groin or kidney areas can also be critical or fatal.
 - b. The baton should not be raised above the head to deliver a blow. Overhead swings of the baton are easily blocked and also make it possible for the baton to be taken from the officer and used against him.



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Use of Force
Four

- c. Blows from the baton shall be made in a short and snappy manner and shall be directed to the arms and legs. This will temporarily incapacitate the aggressor but will not cause serious bodily harm.
 - d. Although the baton is a necessary police weapon, it was never intended to take the place of the service revolver. If deadly force is used or threatened, and human life is endangered, deadly force must be considered as a counter measure. The baton will not suffice in such cases.
14. Following any incident involving the use of force, the officer shall file with the proper authority a report containing the following information:
- a. the names and addresses of victims and witnesses;
 - b. the extent and treatment of injuries, if any;
 - c. the name of treatment facility and doctor administering treatment;
 - d. the reasons and circumstances that required the use of force.

CHAPTER 269

CRIMES AGAINST PUBLIC PEACE.

CH:269, SEC:10. Penalty for Unlawfully Carrying Dangerous Weapons,
Possessing Machine Gun, etc.

(Subsection (b) as amended by 1985, 349 effective January 2, 1986.
For text effective until January 2, 1986, see 1984 Edition)

- (b) Whoever, except as provided by law, carries on his person, or carries on his person or under his control in a vehicle, any stiletto, dagger, dirk knife, any knife having a double-edged blade, or a switch knife, or any knife having an automatic spring release device by which the blade is released from the handle, having a blade of over one and one-half inches, or a slung shot, blowgun, blackjack, metallic knuckles or knuckles of any substance which could be put to the same use with the same or similar effect as metallic knuckles, nunchaku, zoobow, also known as klackers or kung fu sticks, or any similar weapon consisting of two sticks of wood, plastic or metal connected at one end by a length of rope, chain, wire or leather, a shuriken or any similar pointed star-like object intended to injure a person when thrown, or any armband, made with leather which has metallic spikes, points or studs or any similar device made from any other substance or a cestus or similar material weighted with metal or other substance and worn on the hand, or a manrikigusari or similar length of chain having weighted ends; or whoever, when arrested upon a warrant for an alleged crime, or when arrested while committing a breach or disturbance of the public peace, is armed with or has on his person, or has on his person or under his control in a vehicle, a billy or other dangerous weapon other than those herein mentioned and those mentioned in paragraph (a), shall be punished by imprisonment for not less than two and one-half years nor more than five years in the state prison, or for not less than six months nor more than two and one-half years in a jail or house of correction, except that, if the court finds that the defendant has not been previously convicted of a felony, he may be punished by a fine of not more than fifty dollars, or by imprisonment for not more than two and one-half years in a jail or house of correction.



LAW ENFORCEMENT BULLETIN

Michael S. Dukakis
Governor

Charles V. Barry
Secretary

Executive Office of Public Safety
21st Floor, One Ashburton Place
Boston, Massachusetts 02108
727-7775

86-16

December 31, 1986

AN OVERSIZED VERSION OF A FOLDING POCKETKNIFE,
WITH A SINGLE-EDGED BLADE 5" X 1 1/2", IS NOT
A "DIRK KNIFE" UNDER G.L. c. 269, SECTION 10(b).

In Commonwealth v. Miller, 22 Mass. App. Ct. 694 (1986), the Appeals Court reversed a conviction for carrying a dangerous weapon, to wit, a "dirk knife", G.L. c. 269, Section 10(b), based upon its view that under the circumstances the weapon did not satisfy the statutory definition.

The knife was discovered in the defendant's pocket in the closed position. It was described by the court as an oversized pocket knife, with a blade "five inches by one and one-half inches, single-edged and asymmetrical." The court added, "[i]t certainly can cut and is formidable and menacing weapon when opened, but it is neither tapered nor readily adaptable (from its folded form) for use as a stabbing weapon."

The court turned to historical materials that it believed the legislature would have been familiar with when it added the term "dirk knife" to our dangerous weapon law in 1906. A "dirk" was characterized by a tapered blade ranging in length from 7.9 to 11.9 inches and in width from 1 to 1.5 inches. The court also stated that such knives "are useful almost exclusively for stabbing; to facilitate this purpose the blade is usually double-edged and symmetrical." This is consistent, the court found, with the legislature's intention in enacting Section 10(b) -- "that purpose is to outlaw the carrying of those knives which are primarily designed for stabbing human beings or for other unlawful objectives."

Ed Note: The circumstances under which the knife in this case was discovered are not set forth in the opinion beyond the statement that it was "pursuant to a lawful search" The court made it clear that under different conditions a conviction would have been sustainable. "Unquestionably if it [the knife] had been discovered open, in the defendant's hand or in his pocket, it could have been deemed to be a dangerous weapon." In that case the defendant could be charged with a violation of that portion of G.L. c. 269, Section 10(b) which

EOPS LAW ENFORCEMENT BULLETIN

86-16

PAGE TWO

prohibits possession of "a billy or other dangerous weapon other than those herein mentioned and those mentioned in paragraph (a)" Finally, we are reviewing a suggestion by the court to amend our statute and to provide a minimum blade length for a "per se" dangerous weapon.

Peter W. Agnes, Jr.
Assistant Secretary
of Public Safety

N.B. Two legislative changes were made in the dangerous weapon law in 1986 that deserve careful attention. Chapter 212 of the Acts of 1986 adds G.L. c.140, Section 131J which prohibits the sale or possession of so-called electronic stun guns. Chapter 581 of the Acts of 1986 amends G.L. c. 269, Section 10 to prohibit the possession, manufacture or sale of so-called "ballistic knives" which are devices with a detachable blade that is propelled by a spring mechanism.

" SEPTEMBER 15, 1975 "

DEADLY WEAPONS AMENDMENT
TO CHAPTER 269 OF THE
M.G.L.

The following new amendment to chapter 269 section 10 of the General Laws received and approved by the Governor of the Commonwealth on September 3, 1975, with an emergency preamble attached on September 4, 1975, making the provisions of this new act effective forthwith, is published here for the information and guidance of members of the Department.

Chapter 585 OF THE ACTS OF 1975

SECTION 1. Section 10 of chapter 269 of the General Laws is amended by striking out paragraph (b) as appearing in section 2 of chapter 649 of the acts of 1974, and inserting in place thereof the following paragraph.

- (b) Whoever, except as provided by law, carries on his person, or carries on his person or under his control in a vehicle, any stilleto, dagger dirk knife, any knife having a double edged blade, or a switch knife, or any knife having an automatic spring release device by which the blade is released from the handle, having a blade of over one and one half inches, or a slung shot, blackjack, metallic knuckles or knuckles of any substance which could be put to the same use with the same or similar effect as metallic knuckles.

The following capitalized words represent the new amendments to this statute:

1. NUNCHAKU ZOOBOW ALSO KNOWN AS KLACKERS OR KUNG FU STICKS, OR ANY SIMILAR WEAPON CONSISTING OF TWO STICKS OF WOOD, PLASTIC OR METAL CONNECTED AT ONE END BY A LENGTH OR ROPE, CHAIN, WIRE OR LEATHER:
2. A SHURIKEN, OR ANY SIMILAR POINTED STAR-LIKE OBJECT, INTENDED TO INJURE A PERSON WHEN THROWN:
3. A MANRIKIGUSARI, OR SIMILAR LENGTH OR CHAIN HAVING WEIGHTED ENDS.

OVER

The punishment provided for a violation of the provisions of section (b) of chapter 269 has remained unchanged and provides as follows:

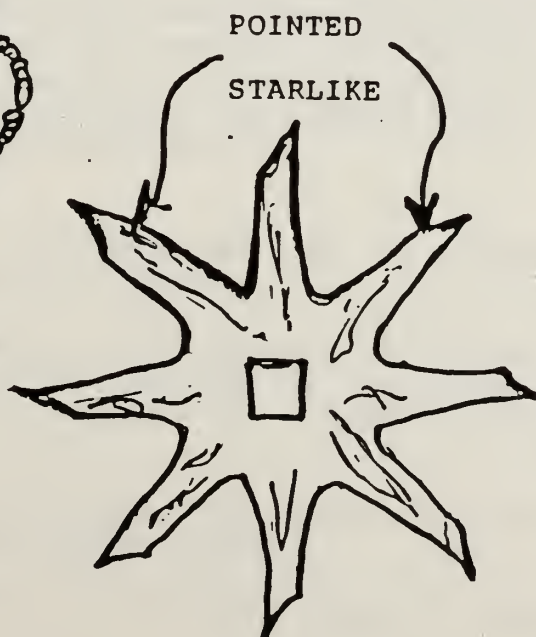
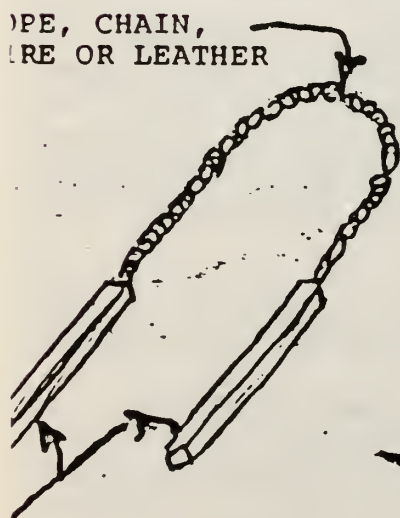
"Shall be punished by imprisonment for not less than 2 1/2 nor more than 5 years in the state prison, or for not less than 6 months nor more than 2 1/2 years in jail or house of correction, except that, if the court finds that the defendant has not previously been convicted of a felony, he may be punished by a fine of not more than fifty dollars or by imprisonment in a jail or house of correction for not more than 2 1/2 years.

Section 12 of said chapter 269 is also amended by the said chapter 585 of the acts of 1975, by adding the three new weapons to the list of weapons that cannot be manufactured or sold. The manufacturing or selling of such weapons is punishable by a fine of not less than \$ 50 nor more than \$ 200 or by imprisonment for not more than 6 months.

NUNCHAKU - ZOOBOW

SHURIKEN

MANRIKIGUSARI



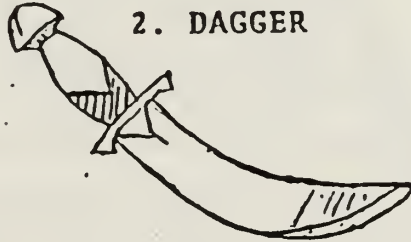
STICKS
Wood
Plastic
Metal

Chapter 269, section 10 of the General Laws may well be considered to be one of the most important chapters and sections of the General Laws for police operational procedures. In this lecture we will cover the so-called prohibited weapons v. the use of any type weapon or object in an actual assault or assault and battery or other crime. Thus, this lecture will contain no reference to the firearms aspects of section 10.

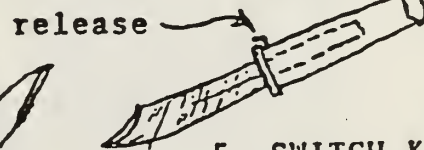
1. STILETTO



2. DAGGER

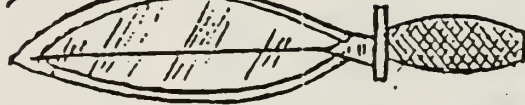


3. DIRK KNIFE

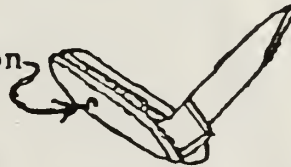


5. SWITCH KNIFE
GRAVITY

4. DOUBLE EDGE KNIFE

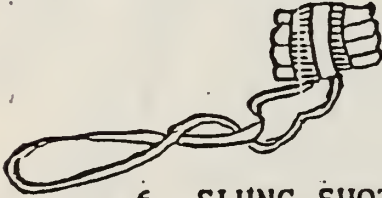


button

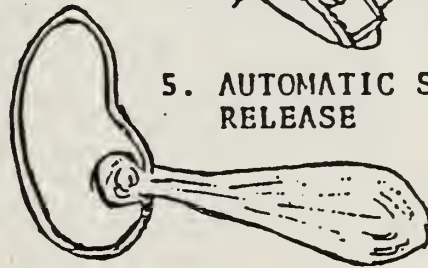


5. AUTOMATIC SPRING
RELEASE

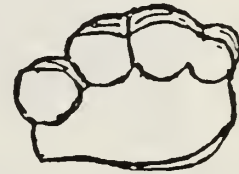
6. SLUNG SHOT



7. BLACK JACK



8. BRASS KNUCKLES



1. Stiletto 2. Dagger 3. Dirk Knife 4. Any knife having a double edge blade 5. Any knife having an automatic spring release device, by which the blade is released from the handle having a blade of over 1½" 6. A sling shot 7. A black jack 8. Metallic Knuckles, or knuckles of any substance which could be put to the same or similar effect as Metallic Knuckles:

The following words represent the new amendment to this section as amended by the Acts of 1975:

A. Nunchaku, Zoobow, also known as Klackers or Kung Fu sticks, or any similar weapon consisting of two sticks of wood, plastic or metal connected at one end by a length or rope, chain, wire or leather.

B. A Shuriken, or any similar pointed star-like object, intended to injure a person when thrown.

C. A Manrikigusari, or similar length or chain having weighted ends.

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Test Yourself and your loved ones! STOP
Y ATTACKER with frightening, devastating
Nunchaku Slices, Swings, Strikes, Catches,
Chokes, Choking and other win-out tech-
niques all yours to learn in no time at all.
Application of the Nunchaku, to be
effective, requires a mere flick of the
stick quickly, a firm grip, and a sense of
elimination. You will be able to strike
opponent and who out the chaku
stick quickly and effortlessly be-
cause your attacker can offer any
defense. The greatest advantage of
Nunchakus over any other form
of self-defense like Karate or Kung-
fu is that this weapon is an exten-
sion of your hands and legs. With
a swing, the Nunchaku will
take in size the distance between
you and your opponent, imag-
ining being able to strike
thrust, jab, or thrust at your
enemy without having to fear
the mightiest kick or punch.
Your attacker will not be
pared and will not be
needed of the unusually
striking range of
Nunchakus. Also,
sticks by them-
selves look relatively
innocent. This being
case, you have
great advan-
tages of surprise
which will allow
you to handle
threatening
situations that
occur.

I'll Make
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KU-Karate's DEADLIEST
FIGHTING STICKS...AN
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By Dr. Andrew S. Linick, Nunchaku Master, who has broken
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and in fields. It is sometimes
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chain. Horsehair was origi-
nally used because of its
high-tensile strength;
rope, nylon and chain
were substituted with
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instruction, YOU will
immediately learn how
a smaller, weaker
man, even a wo-
man can over-
power and disable
a 200 pound
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matter of
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instructions. Your Sticks will be registered with a serial
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Fighting Sticks with your Course. Just \$9.98 for Sticks
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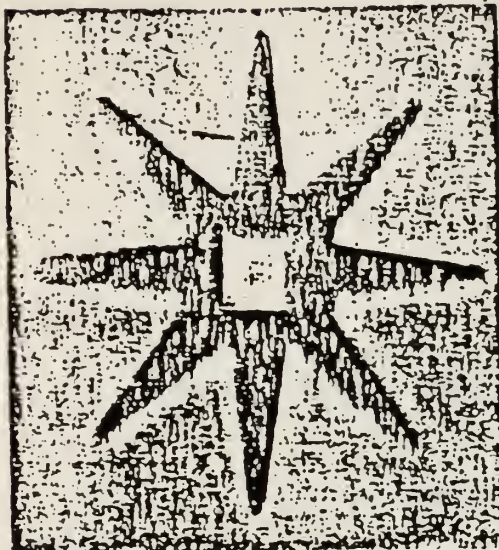
OKINAWAN KOBUJITSU KYOKAI ASSOC.

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AUTHENTIC WEAPONS AND SECRETS OF JAPANESE MARTIAL ARTS

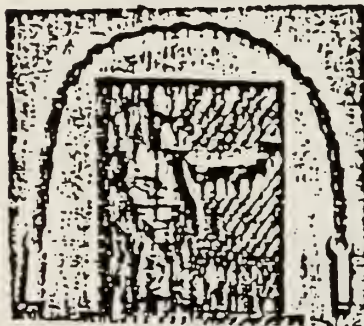
SHURIKEN Dept. D 144 West 19th Street, New York, N.Y. 10011

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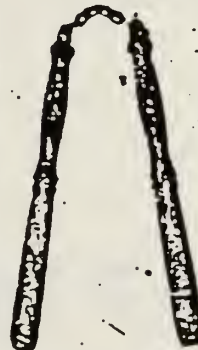


SHURIKEN - this model is 8 pointed, and when thrown, becomes almost like a circular knife. Most important, the hole cut in the center gives aerodynamic stability and greater velocity to bury the Shuriken more deeply into its target. Any board used as an ideal practice target. \$2.00 (4 or more 25% off) postpaid.

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Manrikigusari - a length of chain and weighted end used in various ways for self defense. Overall size - 38", chain - 24", hexagonal weights - 3" from each end. Swing in circles or semi-circles, through the use of the wrist and not the arm. \$4.95 postpaid



NUNCHAKU - "Karate sticks" - the Karate weapon of self defense. Closed at the head of over 100 rebar or steel. Made of solid white oak \$4.95 or rounded type \$5.95. Please add 50¢ postage



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Authentic embossed symbols - Shuriken (star), Goju (fish), Shotokan (tiger), Teikwondo (devil) in key chains \$1.50. His and Hers neck chains \$1.95 each.

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(quantity) (quantity) (quantity)

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Name _____

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Please add postage where specified

City/State _____ Zip _____

Total \$ _____

INSTRUCTOR:
ARTHUR Wm.LAMB

CHAPTER 269 SECTION 10 (B)

CRIMES AGAINST PUBLIC PEACE

As amended effective, September 14. 1987.

(b)

Whoever, except as provided by law, carries on his person, or carries on his person or under his control in a vehicle, any stiletto, dagger ---

The new amendment continues on in this paragraph and states the following.

Or a device or case which enables a knife with a locking blade to be drawn at a locked position, any ballistic knife, with a detachable blade capable of being propelled by any mechanism.

PATROL & SELF DEFENSE
TACTICS

INSTRUCTOR:
Arthur Wm.Lamb.

THE COMMONWEALTH OF MASSACHUSETTS

ADVANCE COPY

1982

ACTS AND RESOLVES

MICHAEL JOSEPH CONNOLLY, SECRETARY OF STATE

CHAPTER 254. AN ACT FURTHER DEFINING DANGEROUS WEAPONS.

BE IT ENACTED, etc. as follows:

Subsection (b) of section 10 of chapter 269 of the General Laws, as amended by section 1 of chapter 535 of the acts of 1975, is hereby further amended by inserting after the word "thrown", in line 1, the following words:- or any armband, made with leather which has metallic spikes, points or studs or any similar device made from any other substance or a cestus or similar material weighted with metal or other substance and worn on the hand.

Approved July 6, 1982.

NON-LETHAL FORCE:
CRIME-(M)- UNARMED

LETHAL FORCE:
CRIME-(F)- ARMED

MALICE

A WEAPON IN ITSELF SHOWS:

1. A DISPOSITION TO INFLICT INJURY: 2. IS ILL WILL:
3. A HOSTILE ACT. (BEARING MALICE, INTENDING HARM).

WITHOUT A WEAPON: = IT MAKES IT VERY HARD FOR THE COURT TO PROVE
THE PERSON "INTENDED" TO USE OR TO IMPLY MALICE.

IT IS "RATHER EASY" FOR THE COURT TO IMPLY MALICE WHEN A
WEAPON HAS BEEN USED. BECAUSE THE CRIME IN IT SELF TURNED
TO A (F).

THIS GRAY AREA, ON THE ISSUE OF USING "NON-LETHAL OR LETHAL
FORCE" IS THE WEAPON ITSELF, IT IS A GREAT HELP TO THE COURT,
TO SHOW IF A WEAPON WAS "INVOLVED" BY THE ASSAILANT THAN ITS
"RATHER EASY" FOR THE COURT TO AGREE. THERE WAS INDEED A THREAT
AGAINST THE OFFICER TO IMPLY MALICE.

FROM THE OUTSET, THE MERE FACT ALONE:

GIVES THE OFFICER "PROBABLE CAUSE" TO BELIEVE AT THE TIME
HE HAD A REASONABLE SUSPICION, TO SUSPECT THE FORCE HE USED
AGAINST THE ASSAILANT WAS SUITABLE TO THE CONFRONTATION OF THE
CRIME.....

SIMPLE A & B

"UNARMED"

CRIME!

IS DEMEANOR

PHYSICAL FORCE

ALLOWED

CONTROL &
IMMOBILIZE)

BY MEANS OF A...?

"ARMED"

CRIME!

FELONY

PHYSICAL FORCE

ALLOWED

(KILL OR MAIM)

MUST HAVE A CONDITION

THIS GIVES THE OFFICER

PROBABLE CAUSE

REASONABLE FORCE

(E.M.T.)

E.----- EQUIPMENT USED

M.----- MEDICAL FACTOR

T.----- TECHNIQUES USED

EXCESSIVE FORCE

COMES INTO PLAY WHEN ANY OF THE LETTERS (E.M.T.)
ARE "NOT SUITABLE" TO THE CONFRONTATION OF THE CRIME,
WHERE "NON-LETHAL OR LETHAL FORCE" WAS USED.

NON-LETHAL FORCE:
CRIME-(M)- UNARMED

LETHAL FORCE:
CRIME-(F)- ARMED

A WEAPON IN ITSELF SHOWS: MALICE

1. A DISPOSITION TO INFLICT INJURY: 2. IS ILL WILL:
3. A HOSTILE ACT. (BEARING MALICE, INTENDING HARM).

WITHOUT A WEAPON: = IT MAKES IT VERY HARD FOR THE COURT TO PROVE
THE PERSON "INTENDED" TO USE OR TO IMPLY MALICE.

IT IS "RATHER EASY" FOR THE COURT TO IMPLY MALICE WHEN A
WEAPON HAS BEEN USED. BECAUSE THE CRIME IN IT SELF TURNED
TO A (F).

THIS GRAY AREA, ON THE ISSUE OF USING "NON-LETHAL OR LETHAL
FORCE" IS THE WEAPON ITSELF, IT IS A GREAT HELP TO THE COURT,
TO SHOW IF A WEAPON WAS "INVOLVED" BY THE ASSAILANT THAN ITS
"RATHER EASY" FOR THE COURT TO AGREE. THERE WAS INDEED A THREAT
AGAINST THE OFFICER TO IMPLY MALICE.

FROM THE OUTSET, THE MERE FACT ALONE:

GIVES THE OFFICER "PROBABLE CAUSE" TO BELIEVE AT THE TIME
HE HAD A REASONABLE SUSPICION, TO SUSPECT THE FORCE HE USED
AGAINST THE ASSAILANT WAS SUITABLE TO THE CONFIRMATION OF THE
CRIME.....

COMMONWEALTH vs. THOMS FARRELL.

Suffolk. January 5, 7, 1948- April 12, 1948.

Present: Qua, C.J. Lummus, Dolan, Ronan, & Williams, JJ.

Assault and battery. Maiming. Practice, Criminal, Election: Charge to jury:

Exceptions: whether error harmful. Election. Evidence, Presumptions and burden of proof; Opinion: expert: Of reputation. Intent. Intoxication. Error, Whether error harmful. Witness Cross-examination Contradiction. Words, "Dangerous weapon", "Maim," "Cripple," "Bodily harm."

At the trial of indictments for assault, there was no error in the denial of a motion that the Commonwealth be required to elect among sundry assaults shown by the evidence as having occurred over a period of several hours, where they found substantially a continuous series of assaults; and it was immaterial that the continuity of the assaults was temporarily interrupted and that several means of assault were employed.

A lighted cigarette might properly be found to be a "dangerous weapon" within G.L. (Ter. Ed.) c. 265, 14, 15-A, where it was used to inflict serious burns upon another person.

A finding of intent to maim and of maiming on the part of an assailant within G.L. (Ter. Ed.) c. 265, 14 was warranted by evidence that with lighted cigarettes he inflicted a large number of serious burns upon the body of another, the scars of which would be permanently visible and which impaired for a time that person's ability to walk freely and to sit at ease.

A trial judge, who fully and correctly charged the jury in general terms that the burden was on the Commonwealth to prove beyond a reasonable doubt that the defendant committed the acts charged in an indictment for assault with a dangerous weapon, was not required to charge also that the burden was on the Commonwealth to prove beyond a reasonable doubt that the complainant did not inflict on himself bodily injury shown by the evidence.

Whether or not a woman consented to intentional acts of a man in burning and cutting her was immaterial on the issue of his guilt of committing assaults on her with dangerous weapons as charged in indictments under G.L. (Ter. Ed.) c. 265. 14, 15A.

OVER

At the trial of an indictment for assault with a dangerous weapon, there was no error in the refusal of a requested instruction to the jury that the defendant must be acquitted if, at the time he committed the assault, "he was so far intoxicated as to be unable to form a guilty intent".

A requested instruction to the jury at the trial of an indictment, that a fact alleged by the Commonwealth and denied by the defendant.

So constructed or so used as to be likely to produce death or great bodily harm. It may also be defined as an instrument or instrumentality which, because of the manner in which it is used, "or attempted to be used," endangers the life or inflicts great bodily harm; or is calculated as likely to produce death or serious bodily injury.

An instrument or instrumentality most innocent appearing and harmless in and of itself may be used in such a dangerous and harmful manner, may be used in such a manner that it causes such serious bodily injury that because of such manner of use "YOU WOULD BE WARRANTED IN FINDING THAT SUCH AN INSTRUMENT OR INSTRUMENTALITY WAS A DANGEROUS WEAPON WITHIN THE MEANING OF THE LAW."

The judge left it to the jury to determine whether upon the evidence the lighted cigarettes as used by the defendant were in fact dangerous weapons....

The instructions of the judge as to the subject matter were adequate and correct. "ALTHOUGH A LIGHTED CIGARETTE IS NOT A DANGEROUS WEAPON WHEN USED FOR THE PURPOSES FOR WHICH IT IS INTENDED, IT MAY BECOME SUCH, AS THE JUDGE INSTRUCTED THE JURY,

"BY THE MANNER IN WHICH IT IS USED." Commonwealth v. Drew, 4 Mass. 391, 395-396. People v. Goolsby, 284 Mich. 375, 378.

Lighted cigarettes not being in themselves dangerous weapons the "Question whether as used in the present case they were dangerous weapons was one fact for the jury" Commonwealth v. Drew, 4 Mass. 391, 396. State v. Bloom, 91 Kans. 156, 158. United States v. Small, 2 Curt. C.C. 241, 244. Rex v. Noakes, 5 C. & P. 326, 328. Assignments of error 50, 51, 52, 53, 56, 57, 58, 59, and 68.

1. Assignments 50 and 56 are based upon exceptions to the refusal of the trial judge to instruct the jury, as to indictment No. 1812, that there was no evidence to warrant a finding that the defendant assaulted the complainant with the intent to maim her.

Assignment 68 is based upon an exception to the following instruction given by the trial.

BY OFFICER: ARTHUR W.M. LAMB.

REASONABLE FORCE

MEANS SUITABLE TO THE CONFRONTATION OF THE CRIME:

CHART----(E.M.T.)

THE CONDITIONS OF THE INCIDENT:

MEANS FROM THE "OUTSET" OF THE FORCE USED, OR
THE ARREST WAS A "WEAK OR RIPE CONDITION?
FROM THIS "PROBABLE CAUSE" COMES INTO PLAY.

(EXAMPLE-- A CIVIL MATTER).



PROBABLE CAUSE

MEANS,----- LIKELY, BETTER THAN 50% PROBABILITY,
MORE LIKELY THAN NOT !

COMES UNDER THE HEADING: REASONABLE SUSPICION.

FORCE BEFORE ARREST OR WITHOUT ARREST.

Although officers are privileged to use "Reasonable Force."

NO FORCE is PERMITTED in making an "Unlawful Apprehension."

The officer is WRONG from the OUTSET:

NOTE CHANGE IN THIS LAW!!!!!!!!!!!!!!!!!!!!!!

The Massachusetts Supreme Judicial Court: On Tuesday March 30, 1983. Threw out a 275-year-old common law which allowed citizens to forcefully resist what they believed to be an Unlawful Arrest.

The SJC opinion, issued in the case of a Somerville man who was convicted of assaulting a police officer in 1981 says:

"In this era of constantly expanding legal protection of the rights of the accused in criminal proceedings, an arrestee may be Reasonably required to submit to a possibly "Unlawful Arrest" and take Recourse in the Legal Process Available. To restore his/her liberty.

However, "Our conclusion does not apply to cases in which police officers use "Excessive Force" in his attempt to subdue the arrestee.

"Thus, we conclude that where the officer uses excessive or unnecessary force to subdue the arrestee; regardless of whether the arrest is lawful or unlawful, the arrestee may defend himself by employing such as reasonably appears to be necessary."

COMM. V MOREIRA 1983 WMC.

BY OFFICER: ARTHUR Wm. LAMB.

CONDUCTING A STOP:

A STOP ALWAYS MEANS:

DETAINING THE SUSPECT.

THIS DETAINING IS "NOT AN ARREST."

AT THE OUTSET EXPLAIN TO THE SUSPECT THAT HE IS "NOT
UNDER ARREST,

BUT THAT HE IS A SUSPECT IN CRIMINAL ACTIVITY YOU ARE
INVESTIGATING.

DIFFERENCE BETWEEN ARREST AND STOP.

INTERFERE WITH THE PERSON:

LIBERTY SUCH AS DETAINING THE PERSON A LONG TIME, OR
MOVING THE PERSON FROM THE STOP SITE.

BY OFFICER: ARTHUR W. LAMB.

SELF-DEFENSE IN A LEGAL ARREST:

BY LAW: IN MAKING A LEGAL ARREST, THE OFFICER IS ~~NOT~~
~~OBLIGED TO RETREAT~~ BUT RATHER THE DUTY TO ~~OVER-~~
~~COME~~ RESISTANCE.

BY OFFICER: ARTHUR W. LAMB.

FAILURE TO ACT:

POLICEMEN HAVE A POSITIVE DUTY TO MAINTAIN THE PEACE AND ENFORCE THE LAW.

IF THEY DO NOT PERFORM, THEY ARE DERELICT IN THEIR DUTY. IN LEGAL TERMINOLOGY THIS AMOUNTS TO NONFEASANCE.

THE GENERAL RULE IS THAT POLICE PROTECTION IS OWED TO THE PUBLIC, NOT TO ANY PARTICULAR INDIVIDUAL.

A

USE OF NON-LETHAL FORCE

B

DEADLY FORCE

USE OF FORCE

The Officer is responsible for his or her prisoner, or Mental Patient, at all times this comes under two categories.

1. Maintaining Safe Custody, of said prisoner or Mental Patient, at all times.
2. If the officer's prisoner or Mental Patient escapes or receives bodily harm in an unwarranted act said officer will be held responsible for neglect of duty.

AMOUNT OF FORCE ALLOWED

The Court held that an officer making an arrest which he or she is authorized to make has a right to use such force as is reasonably necessary to overcome resistance.

If the officer uses unreasonable or excessive force, he or she is liable in an action of tort for assault and battery.

In such an action, if it is shown that the force used by the officer was excessive, it is no defense that the officer acted without malice and in an honest belief that force used was necessary.

THE THREE KEY WORDS IN USING FORCE

Reasonable - Passive - Excessive

Reasonable Force: means within reason, moderate and/or fair action suitable to the confrontation.

Passive Resistance: means Not Active But resisting.

Examples: Sit-ins, street, gate, etc. A motorist refuses to get out of an automobile, a person in a car with a knife holding his child at bay.

Excessive Force: Is the general term for what goes beyond just measure or amount.

Crime A or B will answer what kind of force may be used.

The old Blue Book rule still holds, "No more force shall be used than is necessary, reasonable or for over-coming any resistance that may be offered.

It all boils down to the officer using these words, in his report and in court, that he used the suitable force allowed in the crime A or B using the minimum amount of force to accomplish the maximum results to control said situation.

THERE ARE ONLY THREE BASIC CONDITIONS WHEN AN OFFICER CAN USE FORCE

1. To Effect the Arrest

Example: When it is necessary to subdue a person physically resisting said arrest.

2. To Defend Himself or Others

Example: In self-defense or in defense of another.

3. At The Time, the officer had no doubt that he or she would do bodily harm to herself, himself or others.

Examples: A & B in the presence of the officer, would cover

2 & 3. The abnormal emotional actions, the unstable mannerism of far out threats of words of hate, or an obvious sick mind.

This does not have to deal with violent actions. This comes

under Mental Cases, where because of said actions the officer

is using force as a Humane Factor, No Arrest, but the safe

keeping or custody of said patient.

